

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GENESIS INTERNATIONAL A/S,

Plaintiff,

Case No. 05-CV-70997-DT

v.

HONORABLE DENISE PAGE HOOD

PERFORMANCE SAILING, INC. and
ALEX DECLERCQ,

Defendants.

**ORDER DENYING MOTION TO STAY PROCEEDINGS
AND LIMITED DISCOVERY**

Plaintiff Genesis International A/S filed the instant suit against Defendants Performance Sailing, Inc. and Alex Declercq alleging patent infringement on March 15, 2005. The patent involves U.S. Patent No. 4,708,080 ('080 patent), titled "Composite Thread Line Sails." Plaintiff claims Defendants have committed infringement in this District of its '080 patent.

In its Answer to the Complaint, Defendant denies infringing activities in this District but admits doing business and residence in this District. (Answer, ¶ 7) Defendant does not contest venue in this District. (Answer, ¶ 8)

Defendants seek a stay in this matter claiming that Plaintiff has commenced a "whirlwind of cross-country litigation" in other districts against Defendants and that Plaintiff is pressuring Defendants by filing all these lawsuits. There are apparently four other cases involving the '080 patent: two in the Southern District of New York and two in the Southern District of California.

Plaintiff filed a response denying it is pressuring Defendants and that it filed the suits based on the venue of patent cases, 28 U.S.C. § 1400. Plaintiff, however, agrees to a stay with four

conditions: 1) that initial discovery is allowed to proceed before a stay is entered; 2) Defendants continue to not sell UK Ultra Sails while the action is stayed; 3) that Defendants agree to be bound by the rulings relating to claim construction; and, 4) the stay would expire when a District Court enters a claim construction ruling.

At the hearing in this matter, the parties agreed to stay this case and conduct limited discovery, pending the outcome of the case in the Southern District of New York. The Court inquired whether any of the other cases had entered a Scheduling Order which provided for an earlier Claims Construction Hearing date than that scheduled by this Court—February 3, 2006, with a briefing deadline of December 15, 2005. The parties indicated they would submit additional documents regarding the other cases.

On August 1, 2005, the parties thereafter submitted the information requested by the Court, along with a Stipulation Regarding Stay of Proceedings and Limited Discovery. The Stipulation provides that Defendants will produce their responses and documents in response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and Defendant DeClercq shall appear for a deposition on August 11, 2005. The Stipulation further provides that this case shall be stayed until the case in the Southern District of New York, Case N. 05-CV-2907, has either been settled or that the court enters its claim construction ruling.

The parties submitted a Joint Preliminary Report and Discovery Schedule in the New York case, indicating that the "Tentative Claim Construction Hearing date" was set for November 5, 2005. The docket of the New York case, however, does not indicate that the judge has entered a Scheduling Order in the case, nor has the judge scheduled an initial scheduling conference with the parties. A clerk from the judge's staff in the New York case indicated that the judge had yet to

schedule such a conference with the parties, and that such a conference would not be scheduled until sometime in September 2005. The judge would then issue a scheduling order.

Because the Scheduling Order in this case has been set, the Court will not stay this case pending a decision in a case in New York, which has yet to hold an initial scheduling conference.

Accordingly,

IT IS ORDERED that Defendants' Motion to Stay the Proceedings (**Docket No. 8, filed June 6, 2005**) is DENIED without prejudice.

DATED: September 6, 2005

/s/ DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge